

Mirror, Mirror, on the Wall
Does Capital Punishment Protect Us All?
Or is Revenge What We Really Want?

Exposing the Real Debate Behind the Death Penalty

Honors Project

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By

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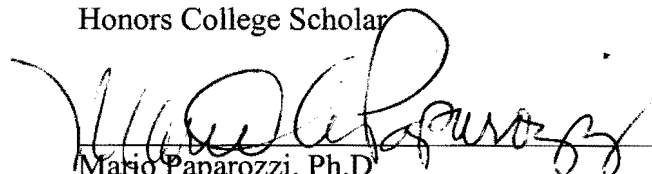
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Abstract

Years of division and debate over capital punishment have not brought America any closer to a consensus on the subject. Deterrence and justice are the two most common justifications for capital punishment, but when these defenses are deemed meritless, the only argument left standing is revenge. Proponents supporting the death penalty are failing to be truthful with others and themselves about the real reasons for their support, and the masking arguments prevent the issue from ever being resolved. When proponents acknowledge that the real reason they support the death penalty is that it fulfills the need to get an "eye-for-an-eye" and argue their case solely on those grounds, only then can it be decided if capital punishment should be offered in America.

Introduction

The debate over the death penalty has been raging in America, as well as in other parts of the world, for over two centuries.¹ People from all walks of life are scattered from one end of the debate spectrum to the other, each person with a position and reasons supporting that position. However, despite years of debate, studies, and attention given to capital punishment and all the surrounding issues, our country seems no closer to ending the debate than it was when the problem began. So what are the issues surrounding the death penalty? What does it offer to American society and why is capital punishment still an issue after decades of division over the subject? This paper will address those questions and others by shedding a light of truth into a death penalty debate that is currently caught in a whirlwind of confusion.

History of Capital Punishment

Since the beginning of time, before any other form of punishment existed, there was the penalty of death. It began as stoning by unorganized mobs for a variety of crimes until the ancient Greeks and Hebrews refined the art and made stoning more formal.² As generations progressed, more creative and torturous forms of execution emerged in cultures throughout the world.

Methods of execution usually involved extreme pain and torture, were very lengthy, and usually were public. In 13th to 19th century England, offenders of crimes ranging from thievery to murder were often tied to a horse and drug across the gallows or hung from a rope until they were half dead. Afterwards, they were decapitated and their

¹ Bedau, Hugo Adam. Debating the Death Penalty. Oxford University Press, 2004, p. vii.

² Costanzo, Mark. "A Long Bloody Past." Just Revenge. St. Martin's Press, 1997, p. 3.

body severed into four parts and displayed across the community as a warning to others. In medieval times, executions were a public event where the community would picnic as they enjoyed their live performance. Ancient Romans used their popular crucifixion method, which involved days of extreme torture before the finale of being hung on a cross, a method designed for a slow and painful death. Crucifixion was applied to an array of crimes ranging from lying, stealing, and murder as the community looked on. The French also made a public event of executions via guillotine, a sharp, heavy blade used for decapitation, which ran rampant during the French Revolution.³

Death has been used for punishment in the United States since 1608, and early colonials considered themselves more civilized than their European counterparts since they avoided grotesque torture and used primarily hanging, though the hangings were still public events.⁴ Throughout the years, in attempts to become a more humane and mature culture, America has revised its manor and methods of executions to where lethal injection (a private, virtually painless form of executions)⁵ is the only form used in most states (Utah has retained use of a firing squad, and most state maintain the gas chamber and electric chair as back-ups)⁶, but America has still held on to the death penalty. When the death penalty was deemed "cruel and unusual" by the U.S. Supreme Court in 1972, four years were spent striving to create a more fair and acceptable process that would warrant approval of the Supreme Court, and in 1979, and approval was given and America resumed capital punishment.⁷

³ Costanzo, Mark. "A Long Bloody Past." Just Revenge. St. Martin's Press, 1997, p. 5-6.

⁴ Costanzo, Mark. "A Long Bloody Past." Just Revenge. St. Martin's Press, 1997, p. 7.

⁵ "Discriptions of Execution Methods." Death Penalty Information Center. Available at <http://www.deathpenaltyinfo.org/php/article.php?scid=8&did=479>. Last Visited on 4/5/06.

⁶ "Discriptions of Execution Methods." Death Penalty Information Center. Available at <http://www.deathpenaltyinfo.org/php/article.php?scid=8&did=479>. Last Visited on 4/5/06.

⁷ Costanzo, Mark. "A Long Bloody Past." Just Revenge. St. Martin's Press, 1997, p. 10.

What Does Capital Punishment Provide to America?

The first step in understanding the capital punishment debate is identifying exactly what it is the death penalty provides to American citizens. The two primary justifications given for the death penalty are deterrence and justice. Proponents for capital punishment argue that some crimes are so heinous that death is the only acceptable punishment, and that only the fear of death will keep society safe from savage murders. These two justifications must be investigated to see if they have substance, or any legs to stand on, in order to determine if the death penalty has purpose in American society.

Deterrence?

Politicians often incorporate their support for the death penalty in their speeches; promising voters that the death penalty will help protect them from stone-cold killers. Presidential candidates George W. Bush and Al Gore were asked during a 2000 debate if they believed the death penalty was a deterrent. Gore affirmed that it was, and Bush agreed, saying that deterrence is the only reason for capital punishment to exist.⁸ However, analysis of the topic has exposed results pointing to the contrary.

Deterrence Theory

In order to understand if the death penalty is a deterrent, one must first understand Deterrence Theory. Deterrence is basically using punishment, or the threat of punishment, to prevent people from acting on unwanted behaviors. There are two types of deterrence, specific and general. Specific deterrence, often called individual

⁸ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 57.

deterrence, occurs when an individual who was punished learned from the punishment and changes his/her behavior in order to avoid future punishment. General deterrence is achieved when others in society refrain from an unwanted behavior or action because they wish to avoid a punishment that was imposed onto someone else.⁹

The idea of capital punishment as a deterrent is popular because it is considered common sense for most people, as it is used in other areas of our lives, like implementing fines in order to deter speeding. Some people may risk a \$100 speeding ticket on a rushed day, but raise that fine to \$5,000, and a large chunk of Americans are deterred from speeding regardless of circumstances. Apply that concept to the death penalty, and it would seem that less people would murder in order to avoid the punishment of death. However, investigating the issue further and using evidence coupled with common sense proves that capital punishment has no deterrent affect on murder.

Deterrence Theory Applied to Capital Punishment

The best way to determine whether or not capital punishment has any deterrent affect is to look into its past and compare its use, in varying degrees, to the crime rates in the areas and populations where it was used at the time. It is clear that there has been a vast history of capital punishment, throughout international history as well as American history. But has it deterred murder, or even crime in general? When you compare the use of capital punishment throughout history and the crime rates within the societies it was used, the answer is no. Some proponents argue that it has a specific deterrent affect; however, reviewing the meaning of specific deterrence proves this is not true.

⁹ Chan, Janet and Oxley, Deborah. "The Deterrent Affect of Capital Punishment: A Review of the Research Evidence." *Contemporary Issues in Crime and Justice*. Available at [http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/cjb84.pdf/\\$file/cjb84.pdf](http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/cjb84.pdf/$file/cjb84.pdf). Last visited on 4/5/06.

As explained earlier, specific deterrence occurs when an offender is compelled to refrain from wrongdoing after receiving a punishment in order to avoid future punishment. The death penalty doesn't compel the offender to refrain from crime; it simply makes it impossible for the offender to commit crime. Just because you take a person's vehicle away to prevent them from speeding does not mean they are deterred from speeding, it only means you have made it impossible for them to speed. So to use specific deterrence as a justification for capital punishment is pointless because it simply does not apply.

Though common belief throughout history is that capital punishment has a general deterrent affect, evidence leads to a different conclusion. Despite centuries of capital punishment spanning across the globe and across time, varying everywhere from grotesque public events involving pain and torture for small petty crimes to private, quick and easy deaths applied only to murderers, murder rates, as well as general crime rates, have remained unaffected.¹⁰ Even when terrible deaths were imposed as a form of religious persecution, it did not stop masses of people from practicing their religion. Even when the medieval public picnicked around the horrifying executions of thieves, their communities still had a problem with stealing.¹¹

And today, in American society, evidence against deterrence abounds. Despite having by far the highest execution rate of all U.S. regions, as shown by Appendix A, the South still has the highest murder rate according to the 2004 FBI Uniform Crime Report. Additionally, the Northeast has the lowest execution rate and the lowest murder rate.¹²

¹⁰ Need source

¹¹ Need source

¹² "Death Penalty Fact Sheet." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.

More than one third of U.S. executions since 1976 have been in Texas, and still their murder rate considerably surpasses the nation's average murder rate.

Furthermore, non-capital states have not only maintained lower murder rates than death penalty states, but gap between them is growing wider.¹³ The idea of the death penalty being a deterrent also goes against the opinion of professionals in the criminal justice field. "According to a survey [in 1996 by Michael Radelet and Ronald Akers] of the former and current presidents of the country's top academic criminological societies, eighty-four percent of these experts rejected the notion that the death penalty acts as a deterrent to murder."¹⁴

Why doesn't the death penalty deter murder? There are a few reasons. Scott Turrow, a known trial attorney for capital cases and a member of Illinois's commission on the death penalty, believes those who commit murder are not the types of people who consider the consequences of their actions, which is a necessity for a punishment to be a deterrent. His experience has revealed to him that most murders act out of "...rage, perverted self-loathing, or a grandiose conviction that they will never be caught...[all] in which consequences have no role."¹⁵ In his opinion, people in a normal state of mind who thoroughly think through the consequences of murder do not commit most murders, and those who do think through the consequences and still choose to murder strongly feel they will not get caught.

¹³ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 58.

¹⁴ "Death Penalty Fact Sheet." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.

¹⁵ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 60.

Though it could be that most murderers constitute a class of people who do not think before they act, the primary reason the death penalty is not a deterrent is because it is not, and never has been (and possibly never could be) applied in the manner that punishment needs to be applied in order for it to have a deterrent effect. According to established research, in order for a punishment to deter, it must be swift, consistent (meaning it must be administered every time the crime is committed), and it must be a punishment that the offender does not want (meaning the punishment must be undesirable to the person receiving the punishment).¹⁶ The death penalty is none of these. It is not swift, as the average time between conviction and execution is eleven and a half years (the average time it takes to exhaust all appeals)¹⁷. It is not consistent. According to the FBI, of the 22,000 criminal homicides reported between 1990 and 2000 (in the category of murder and non-negligent manslaughter), only 15,000 resulted in an arrest (at a rate where only sixty-five percent of cases result in an arrest), 13,500 were prosecuted, 10,000 resulted in a homicide conviction, 300 resulted in a death sentence, and only 55 executions.¹⁸ It is also often not punishing, as most murders are not the type who consider the consequences before they act.¹⁹

Justice?

Of the two justifications for capital punishment, deterrence is proven to have no merit. That leads into the investigation of justice as the second defense for capital

¹⁶ Need source.

¹⁷ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 61.

¹⁸ Bedau, Hugo Adam. "Survey of the Death Penalty in America." Debating the Death Penalty. Oxford University Press, 2004, p. 27.

¹⁹ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 60.

punishment. According to the American Heritage Dictionary, justice is “upholding what is just, especially *fair treatment* and *due reward* in accordance with honor, standards, or law.”²⁰ There are two elements involved in concept of justice that are held in the hearts and minds of American society outlined by this definition: fair treatment and due reward. Due reward involves a person getting the punishment deserved, no more and no less. Proponents of the death penalty argue that heinous murders deserve no less than a death sentence, which very well may be. The argument over which crimes deserve which punishment will never end because it is a matter of opinion and will change from person to person. There is no way to scientifically calculate which crime is deserving of a particular punishment.

However, it is also a staple of American society that justice involves the fair treatment of all. Etched over the entrance of the Supreme Court in Washington, D.C. is their motto of “Equal Justice Under Law.”²¹ This element of justice can be and has been measured and the evidence has proven that capital punishment in America has not been just in this sense of the word.

The Worst of the Worst?

In theory, the death penalty is reserved for the worst of the worst. In reality, many of the nations worst murderers receive only life sentences and less heinous murderers receive the ultimate punishment. Evidence of arbitrary use of the death penalty is found across geographical, racial, and gender lines.

²⁰ “Justice.” The American Heritage Dictionary of the English Language, Fourth Edition. Available at <http://www.ask.com/reference/dictionary/ahdict/35382/justice>. Last visited on 4/5/06.

²¹ Domer, Robert K. “Violence, Arbitrariness and Innocence in Capital Cases.” Thomas M. Cooley Law Review: Death Penalty Symposium. Thomas M. Cooley Law School, 1996, p. 784.

Though it is not strange the application of the death penalty between states would be slightly variable due to differences in laws, statues, and populations, the numbers within the states should be fairly consistent, but in many cases are not. One example is Baltimore County, Maryland. Suburban Baltimore County has nine times more inmates on death row than Baltimore City, but only one-tenth of the county's murders. Two Indiana counties have sent just as many inmates to death row than all other counties combined. Upstate New York produces sixty-one percent of the state's death sentences and only nineteen percent of its homicides. Arbitrariness is also evident in the federal death penalty, as five of its ninety-four districts have submitted forty-two percent of the capital sentence requests.²²

Reports on the death penalty consistently show a disparity between races and the use of the death penalty. Of states where studies on capital punishment have been conducted, ninety-six percent have shown evidence of race discrimination, either of the victim, offender, or both. While statistics show discrimination based on the offender's race, the most disturbing evidence of discrimination pertains to the race of the victim. The U.S. Department of Justice reported that according to statistics collected over the past quarter century, there were six times more black homicide victims than white²³, however, eighty percent of capital cases involve a white victim, as visualized by

²² "Evidence of Arbitrariness." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/article.php?did=1328>. Last visited on 4/2/06.

²³ Marquis, Joshua K. "Truth and Consequences: The Penalty of Death." Debating the Death Penalty. The Oxford Press, 2004, p. 135.

Appendix B.²⁴ Additionally, a Philadelphia study found that blacks received the death penalty at a thirty-eight percent higher rate than other races that commit similar crimes.²⁵

Why So Random?

Why is the death penalty so random? A lot of it falls on the lack of adequate guidelines, unchecked discretion allowed the prosecutor and the quality of the defense. Most states have 15-20 factual circumstances where the death penalty can be considered.²⁶ This allows for a wide range of cases to be sought instead of a narrow selection, giving prosecutors a wider variety to pick and choose from. Additionally, most states require a jury to find only one aggravating factor before imposing a death sentence, and in many states, like Texas, one of the factors is that the murder was violent and unjust²⁷, which basically covers all first degree murder instead of narrowing it down to the worst cases like the death penalty is intended to do.

The decision to seek the death penalty rests solely on the prosecutor²⁸, which significantly impacts the arbitrary use of the death penalty. Everyone, including prosecutors, has their own preconceived notions about what cases warrant a death sentence, and the unbridled judgment of one person coupled with minimal guidelines contradicts the whole idea of "Equal Justice Under Law." The uneven distribution of

²⁴ The Death Penalty Information Center reports that fifty percent of homicide victims are white, but it is unclear over what span of time or from what study those statistics were collected.

²⁵ "Evidence of Arbitrariness." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/article.php?did=1328>. Last visited on 4/2/06.

²⁶ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 121.

²⁷ Bedau, Hugo Adam. "Survey of the Death Penalty in America." Debating the Death Penalty. The Oxford Press, 2004, p. 32.

²⁸ Johnson, Sheri Lynn. "Race and Capital Punishment." Beyond Repair? America's Death Penalty. Duke University Press, 2003, p. 131.

capital sentences across geographical and racial lines is primarily attributed to the wide discretion allowed prosecutors.²⁹

According to Supreme Court Justice Bader Ginsburg, "People who are well represented at trial do not get the death penalty . . . I have yet to see a death case among the dozens coming to the Supreme Court on eve-of-execution stay applications in which the defendant was well represented at trial."³⁰ Poor legal representation contributes to mistakes at trial that affect the outcome of both the verdict and sentence, resulting in the arbitrary administration of the death penalty. The vast majority of capital defendants cannot afford private legal representation and must rely on state appointed attorneys for their defense. Though there are standards in place for attorneys representing in a capital trial, they are minimal, and the American Bar Association (ABA) has confessed that state appointed council for capital cases often is not adequate.³¹ Evidence also abounds proving that this problems does exist. A few examples are Texas, where one-fourth of death row inmates were defended by attorneys who have since either been reprimanded, put on probation, suspended or banned from practicing law. Lawyers representing sixteen North Carolina death row inmates (three of which have been executed) have either been disbarred or disciplined for unethical or criminal conduct.³²

According to Richard Dieter, the problem with representation is not primarily that unethical attorneys are being assigned to defend capital cases, but attorneys

²⁹ Johnson, Sheri Lynn. "Race and Capital Punishment." *Beyond Repair? America's Death Penalty*. Duke University Press, 2003, p. 132.

³⁰ "Evidence of Arbitrariness." *Death Penalty Information Center*. Available at: <http://www.deathpenaltyinfo.org/article.php?did=1328>. Last visited on 4/2/06.

³¹ Maher, Robin M. "The Guiding Hand of Council and the ABA Guidelines for the Appointment of Defense Council in Death Penalty Cases." *HOFSTRA Law Review*. Available at: <http://www.abanet.org/deathpenalty/HofstraLawReview.pdf>. Last visited on 4/2/06.

³² "Evidence of Arbitrariness." *Death Penalty Information Center*. Available at: <http://www.deathpenaltyinfo.org/article.php?did=1328>. Last visited on 4/2/06.

inexperienced in capital trials are being thrown into the task unprepared for the special rules and guidelines involved.³³ Since death is irreversible, the Supreme Court has paid close attention to death penalty cases in attempts to ensure a just trial. It is with this mentality that the Supreme Court, through numerous rulings, has given capital cases higher standards than non-capital cases.³⁴ In essence, a death penalty trial is a completely different ball game than other trials, and court appointed attorneys are too often unfamiliar with the rules, which therefore sets them up for defeat.

Could the Death Penalty Ever Be Fair?

Governor George Ryan of Illinois realized how the death penalty was being unfairly applied in his state and with the hope of giving the death penalty justice appointed a commission to investigate the matter and recommend improvements. Illinois's Commission on the death penalty, which consisted of fourteen professionals who "represent diverse viewpoints and experience," spent nearly a year conducting an extensive investigation on the death penalty and the problems that exist.³⁵ In the end, they came up with eighty-five recommendations that would help make the death penalty more fair, accurate, and aligned with our current laws, constitution, and idea of justice, though nearly all of the recommendations would increase the already astronomical cost of the death penalty with taxpayers footing the bill.

³³ Dieter, Richard C. "With Justice for Few." Available at <http://www.deathpenaltyinfo.org/article.php?scid=45&did=544>. Last visited on 4/5/06.

³⁴ Yackle, Larry W. *Capital Punishment, Federal Courts, and the Writ of Habeas Corpus*, in *Beyond Repair? America's Death Penalty*, ed. Stephen P. Garvey, Durham: Duke University Press, 2003, p. 61-62.

³⁵ Turrow, Scott. *Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty*. Farrar, Straus, and Giroux, 2003, p. 25.

One of the recommendations included reducing the current twenty factual circumstances down to five very specific and simple criteria, including cases where the offender murdered more than one person, where a law enforcement officer, fireman, correctional officer or inmate was the victim, where the murder obstructed justice, or when torture was involved in the case. Another recommendation was to have each decision to seek the death penalty be reviewed by a statewide commission consisting of the Attorney General, three prosecutors, and a retired judge.³⁶ Though these guidelines would limit the number of cases eligible for the death penalty, it still wouldn't ensure that a death sentence is sought for all eligible cases, which is necessary in order to ensure fairness for all. Even with the guidelines, prosecutors can still choose to never seek the death penalty, meaning certain death eligible offenders would serve life in prison while others would receive death. In regards to improving the quality of representation, the ABA in 2003 published revisions to their 1989 publication of standards necessary for attorneys representing capital defendants. However, these standards are what "*should* be required in the defense of capital cases" and they openly admit, "... all too often, the kind of zealous, effective legal representation the Guidelines describe does not occur [in capital trials]."³⁷ This profound statement by the ABA reveals the truth that capital defendants are underrepresented, preventing a just trial for many accused murderers.

³⁶ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 121-122.

³⁷ Maher, Robin M. "The Guiding Hand of Council and the ABA Guidelines for the Appointment of Defense Council in Death Penalty Cases." HOFSTRA Law Review. Available at: <http://www.abanet.org/deathpenalty/HofstraLawReview.pdf>. Last visited on 4/2/06.

Revenge

Since it has already been established that capital punishment is not a deterrent and does not offer equal protection, the only justification left for the death penalty is that it partially satisfies the need for justice for some people as far as due rewards is concerned. There are many people who feel that the only due reward for some crime is death, which is a natural feeling that exists in many people and cannot be argued away. But what exactly is due rewards? It is basically the very natural, human need to see a wrong corrected by the perpetrator suffering the same fate as the victim, also called revenge. Some people call it an "eye-for-an-eye." It's the unsettling feeling that order will not be restored unless that revenge is achieved and all will not be well until the offender meets the same fate as his victim: death. This is and should be recognized as a valid justification for the death penalty as it is a natural feeling in a large amount of people; however, it also is, and should be, recognized as the only justification for the death penalty and people must be honest when defending their support for capital punishment.

The priority of this justification is another matter, as it varies from person to person. However, as a democratic country, public opinion is paramount in deciding the priority of matters such as capital punishment, but the truth must be known before an accurate measure of public opinion can be ascertained. Only when proponents for capital punishment recognize capital punishment for what it really is can it be determined how much weight, or priority, revenge has in the death penalty debate.

Would an Alternative Satisfy the Public's Wishes?

Before it can be decided whether or not the death penalty is interchangeable with the current alternative of life without parole, the two must be compared and contrasted to

see how they stack up against each other. It has been established that the death penalty is neither fair nor deters murder. There is also no evidence supporting the idea that the alternative, life in prison without parole, is a deterrent for murder or that it is applied fairly. Protection of society from dangerous criminals is also not a justification for the death penalty because that purpose can also be achieved through life imprisonment without the possibility of parole (a common misconception is that even with a life sentence, inmates can still eventually be released on parole; however, all states but New Mexico and Alaska offer the sentence of life without the possibility of parole³⁸, which means just as it says). The only argument left for the death penalty is revenge. However, life without the possibility of parole has one advantage over capital punishment: it is much less expensive. Before we can weigh revenge against cost, the degree and height of cost must be established.

Weighing the Costs

A common misconception in American society is that it is cheaper to put a criminal to death rather than pay for a lifetime of room, board, food, and medical care. This common belief could not be further from the truth. Nationally, the cost of the death penalty is three times more than life in prison.³⁹ The Los Angeles Times reported in 2005 that the death penalty cost taxpayers in California is \$214 million each year *over* the costs of keeping inmates in prison for life, and similar statistics can be found in all other death penalty states. A few examples are Florida, who pays \$51 million more each year and North Carolina who pays \$2.16 million more yearly. Kansas pays 70% more on

³⁸ "Life Without Parole." The Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/article.php?did=555&scid=59>. Last visited on 4/2/06.

³⁹ Turrow, Scott. Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty. Farrar, Straus, and Giroux, 2003, p. 61.

death trials than on non-capital trials. Texas pays three times more on the death penalty for a single inmate than on an inmate serving a life sentence in a single cell for 40 years at the maximum level of security.⁴⁰

Why is the death penalty so expensive? Most of the extra costs are incurred during the trial. First of all, the majority of capital defendants cannot afford their own attorneys⁴¹, and as in all cases where a defendant cannot afford representation, the court appoints a state-funded attorney. However in a capital trial, not only are there twice as many attorneys appointed to both the defense and the prosecution⁴², but they are also paid more than they would be if the death penalty was not sought. While non-capital defense attorneys receive on average sixty-five to seventy-five dollars per hour, capital defense lawyers average up to \$125 per hour.⁴³

Additionally, it takes much longer to prepare for a capital trial, a year on average, compared to non-capital trials which typically only take a few months. There are many more pretrial motions and many more experts hired by both sides (which, again, are both funded by the state). The jury selection process is also intensified, as each juror must be individually questioned about his or her personal views of the death penalty, and they are much more likely to be sequestered, which is a huge cost in and of itself. Capital trials are also three-five times longer than non-capital trials as there are two trials held:

⁴⁰ "Death Penalty Fact Sheet." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.

⁴¹ "Death Penalty Representation." The Death Penalty Information Center. Available at <http://www.deathpenaltyinfo.org/article.php?did=896&scid=68>. Last visited on 4/1/01.

⁴² "The High Cost of the Death Penalty to Taxpayers." Death Penalty Focus. Available at <http://www.deathpenalty.org/index.php?pid=cost> Last visited on 2/05/06.

⁴³ "Death Penalty Price Tag." Legal Times. Available at: <http://www.tnstate.edu/cmginis/deathpenaltypricetag.htm> Last visited on 2/6/06.

one to determine guilt and the other to determine a sentence.⁴⁴ Finally, most states mandate that that state Supreme Court review any trial where there was a death sentence, and several states require more than one appeal.⁴⁵

The majority of costs for the death penalty are incurred up front, unlike life sentences which are paid over a long period of time, making life in prison much easier to pay for. However, even more costly is a combination of the two, which is usually the outcome of capital trials; a long, drawn out, costly trial in pursuit of the death penalty, but a life sentence is imposed instead of death. Most death sentence trials result in life in prison, and even when a death sentence is given, it is rarely carried out.⁴⁶

Only twelve percent of death sentences actually result in an execution. This figure doesn't even take into consideration all of the death trials that do not return a death sentence. Eighty-two percent of retried death sentences are either commuted to life without parole or the offender is exonerated.⁴⁷ Therefore, the majority of capital cases are a double expense to taxpayers: they pay for the excessive cost of a death penalty trial *and* end up absorbing the inmates housing, food, and medical costs for the duration of their life. New York, in the seven years between 1995 (when the state reinstated the

⁴⁴ Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/31/06.

⁴⁵ Carner, Graham "Kelly v. South Carolina: The Symbolic and Substantive Implications of the Supreme Court's Latest Word on Parole Ineligibility in Capital Cases." *Wake Forest Law Review* Vol. 38 No. 1327. Winter 2003.

⁴⁶ Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/31/06.

⁴⁷ Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/31/06.

death penalty) and 2003, spent \$160 million on death penalty trials without a single execution.⁴⁸

Furthermore, there are other, more cost effective ways to prevent murder and increase safety, such as more police, community policing programs, better lighting in high crime areas, better rehabilitation programs in prisons, projects to reduce unemployment, and better programs for at-risk youth in schools.⁴⁹ Take California, for instance, and the \$214 million more spent each year just to seek a death sentence instead of life without parole.⁵⁰ They could seek only life without parole and spend that extra \$214 million for the above listed projects that would prevent future crime. Many death penalty jurisdictions have recently cut back spending on numerous crime prevention services, like community-policing programs, in the past year as a means to save money.⁵¹ Other vital public services have been cut, such as public libraries and school programs.⁵² Research on community-policing programs has indicated a reduction in crime in the areas where it is used.⁵³ However, the death penalty has no proven reduction in crime.⁵⁴

⁴⁸ Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/31/06.

⁴⁹ Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/03/06.

⁵⁰ "Death Penalty Fact Sheet." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.

⁵¹ Butterfield, Fox. "As Cities Struggle, Police Get By With Less." The New York Times. Available at <http://0-proquest.umi.com/uncclc.coast.uncwil.edu/pqdlink?index=29&did=669994291&SrchMode=3&sid=1&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1144026486&clientId=15118&aid=2>. Last visited on 3/31/01.

⁵² Dieter, Richard C. "Costs of the Death Penalty and Related Issues." New York State Assembly: Standing Committees on Codes, Judiciary, and Correction. Available at <http://www.deathpenaltyinfo.org/NY-RCD-Test.pdf> Last visited on 3/31/06.

⁵³ Friedman, Robert R. "Community Policing: Some Conceptual and Practical Considerations." Georgia State University Department of Criminal Justice. Available at <http://www.cjgsu.net/initiatives/considerations.htm>. Last Visited on 4/5/06.

⁵⁴ "Death Penalty Fact Sheet." Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.

What is left is the natural, human need for revenge or the justice of due reward pitted against money saved that could be applied towards other measures that could increase public safety. Is revenge worth the cost of capital punishment?

Conclusion

Only after determining the truth about exactly what it is the death penalty provides for Americans and how it stacks up against the alternative can a true debate be conducted on whether it should be practiced in American society. Both sides must acknowledge what the true arguments are. Proponents for the capital punishment must acknowledge that their need for revenge this is the only justification for the death penalty, maintain that it is a valid justification as it is an inherent human need, and fight their battle on those grounds. Whether or not Americans want the death penalty cannot be determined until everyone is honest about the issues. Only then can it be seen how many people still want capital punishment.

Currently the debate over the death penalty is lost in a cloud of confusion because proponents of both sides are not being honest about what is at the heart of the issue. The fact that no one wants to admit is that people want the death penalty because they are mad and they want revenge. People, rightfully so, get angry if an innocent victim is tortured and wrongfully murdered, and in response to that anger, a raw, natural desire for revenge shakes them to their very core. The undeniable feeling that order is not restored unless the perpetrator is no longer alive sets in and consumes their mind. It is a natural feeling and a natural reaction.

However, people are uncomfortable admitting to the fact that they want someone dead as a result of revenge. Americans pride themselves as members of a civilized and

mature society, and as members of that highly developed society, they are taught from a young age to rise above their emotions and to make rational and humane decisions. To thirst for revenge and death is a notion many consider barbaric, immature, and uncharacteristic of a civilized society. It is when "capital punishment became morally troubling to many Americans [that] the justification of deterrence gained prominence."⁵⁵ The argument of deterrence gave proponents for the death penalty a mask to hide behind, shielding their true reasons for supporting their cause and justifying their beliefs with myths that the public's safety is preserved. When the mirror is held up and people are forced to look in it and see the death penalty as it really is, they do not see the "fairest of them all"; the comfortable picture that the death penalty is necessary to deter murder therefore increasing safety in society. They see the fairest of them all's ugly stepsister, uncivilized revenge personified.

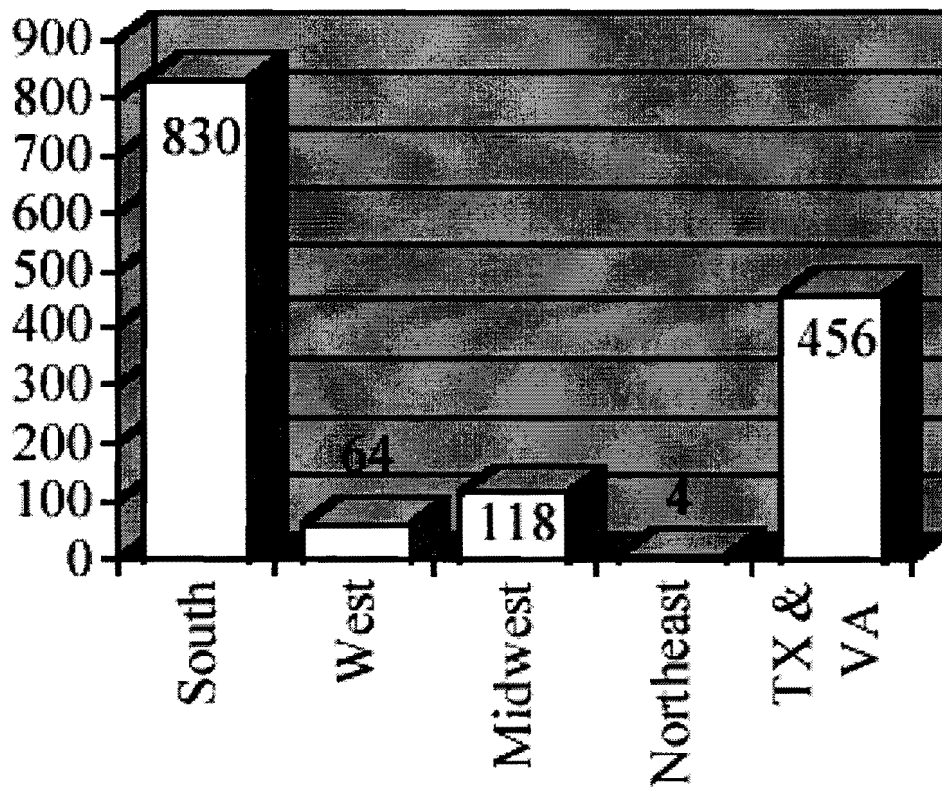
When people can look into that mirror, call the death penalty what it is, and still be comfortable with their decision to support it, then America can begin to gain some ground in the debate over the death penalty. If the instinctive need for revenge and the due reward of death is worth its astronomical price we are paying, then so be it. There lies an argument supporting capital punishment. There is where a truthful argument and investigation can be done to determine the if capital punishment has ground to stand on or priority in American society. It is only when people can remove the mask of deterrence and be honest with themselves and the rest of society about their stance that a decision can be made of whether or not capital punishment has a place in our society. We may never know the answers to these questions, but until this honesty is accepted, the

⁵⁵ Costanzo, Mark. "Does the Death Penalty Deter Potential Murders." *Just Revenge*. St. Martin's Press, 1997, p. 95.

lost argument surrounding the death penalty will continue to rage, costing taxpayers money, with no end in sight.

Appendix A

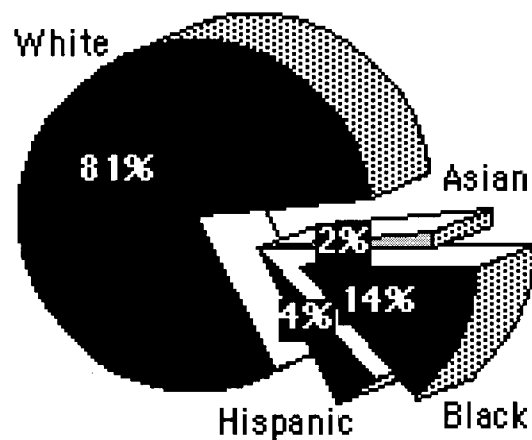
Execution By Region*



"Death Penalty Fact Sheet." Death Penalty Information Center.
Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>.

Appendix B

Race of Victims in Death Penalty Cases



Over 80% of completed capital cases involve white victims, even though nationally only 50% of murder victims are white.

“Death Penalty Fact Sheet.” Death Penalty Information Center. Available at: <http://www.deathpenaltyinfo.org/FactSheet.pdf>. Last visited on 3/31/06.